IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1428 of 2007

PANNA LAL
V/S
PRABHU LAL

Mr. RAJESH JOSHI, for the appellant / petitioner

Mr. BK BHATNAGAR, for the respondent

Date of Order : 3.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The only grievance of the appellant is, that the temporary injunction granted by the learned trial Court is beyond the prayer made in the application for temporary injunction, inasmuch as, the prayer made in the application was seeking to restrain the plaintiff, whether himself or through servants, or agents, or any other person, to raise any construction, before effecting partition, and for stopping the continued construction. The learned trial Court has granted this injunction, to which extent, the appellant has no grievance. The only grievance is, that the last sentence of the order "और न ही ऐसे स्थान को किसी भी एक पक्ष के आधिपत्य में रखते हुए किसी भी प्रयोजनार्थ प्रयुक्त करें।", this being not the prayer of the respondent, this part of the order could

not be made.

Learned counsel for the respondent submits, that this is a consequential order, because if the construction cannot be raised, the apartment cannot be used.

In my view, may be, that it may be consequential or not, but when the prayer made was for stopping the construction, and that prayer had been granted, it was not required for the learned trial Court, to grant this further prayer.

Accordingly, the appeal is disposed of, by modifying the impugned order, to the extent, that the above sentence in the order stands deleted.

At the same time the learned trial court is, further, directed to decide the suit most expeditiously.

(N P GUPTA),J.

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